We therefore allow the appeal by the Comptroller-General and restore the findings and the Deciding Order of the Special Commissioners with costs. The deposit, if paid, should be refunded to the Comptroller-General.

Appeal allowed.

Solicitors: *Skrine & Co.*

THE ATTORNEY GENERAL, MALAYSIA v. CHIOW THIAM GUAN

[O.C.J. (Hashim Yeop A. Sani J.) August 12, 1982]
[Kuala Lumpur – Civil Suit No. A12 of 1982]

Practice & Procedure – Statement of Claim – Application to strike out – Principles applied – R.H.C. 1980, O. 18 r. 19.

Administrative Law – Application for declaration that mandatory sentence of death under s. 57(1) of the Internal Security Act 1960 was unconstitutional – Federal Constitution, arts. 5(1) & 8.

Constitutional Law – Whether death sentence under Internal Security Act unconstitutional – Federal Constitution, arts. 5(1) & 8.

This was an application to have the plaintiff's Statement of Claim struck out under 0.18 r. 19, R.H.C. 1980 on the ground that the Statement of Claim disclosed no cause of action. The plaintiff sought for a declaration that the mandatory sentence of death under section 57(1) of the Internal Security Act was unconstitutional as being unreasonable, oppressive and infringing the equality provision of the Constitution.

Held: (1) the Statement of Claim should be struck out only in plain and obvious cases where the Judge can say at once that the Statement of Claim as it stands is insufficient even if proved to entitle the plaintiff to the relief. It follows that so long as the Statement of Claim discloses some ground of action, the mere fact that the plaintiff is not likely to succeed is no ground to strike out the Statement of Claim;

(2) as regards art. 5(1) of the Federal Constitution, the law is that if Parliament deems it necessary that the death penalty should be mandatory it is not within the province of the court to adjudicate upon the wisdom of such a law. The law may be harsh but the role of the court is only to administer the law as it stands;

(3) art. 8 of the said Constitution is not contravened because although the mandatory death sentence may appear cruel it is not unequal in its application in that every person convicted of the offence would be subject to the same punishment;

(4) the plaintiff had exhausted all remedies available to him, both judicial and administrative. Therefore the subject sought for declaration was not a proper one and that the discretion of the court should be exercised against granting the application of the plaintiff;

(5) the application of the Attorney General would be granted and the Statement of Claim would be struck out.

Cases referred to:–

(1) *Low Yat* v. *G.C. Grace* [1947] M.L.J. 115.
(2) *Mooney & Ors.* v. *Peat, Marwick, Mitchell & Co. & Anor.* [1967] 1 M.L.J. 87.
(3) *Runyowa* v. *R.* [1967] A.C. 26.
(4) *Michael de Freitas* v. *George Ramoutar Benny & Ors.* [1976] A.C. 239.
(5) *Ong Ah Chuan* v. *Public Prosecutor* [1981] 1 M.L.J. 64.

CIVIL SUIT.

Tan Sri Abu Talib (Attorney General) (*Lim Beng Choon*, Senior Federal Counsel with him) for the applicant/defendant.

Karpal Singh (*Ngeow Yin Ngee* and *Lee Min Choon* with him) for the respondent/plaintiff.

Hashim Yeop A. Sani J.: This is an application to have the plaintiff's Statement of Claim struck out under Order 18 Rule 19 of the Rules of the High Court 1980 on the ground that the Statement of Claim discloses no cause of action. The law to be applied is elementary and has been set out in a number of cases – see *Low Yat* v. *G.C. Grace*(1) and *Mooney & Ors.* v. *Peat, Marwick, Mitchell & Co. & Anor.*(2) The principle which seems to have been established is that the Statement of Claim should be struck out only in plain and obvious cases where the Judge can say at once that the Statement of Claim as it stands is insufficient even if proved to entitle the plaintiff to the relief. It follows that so long as the Statement of Claim discloses some ground of action the mere fact that the plaintiff is not likely to succeed is no ground to strike out the Statement of Claim.

Bearing this principle in mind I would approach the present application by asking the following questions –

(1) Is there *some* ground disclosed in the Statement of Claim? and

(2) If the answer is in the affirmative, is it proper to allow the issue to be re-opened having regard to the history of the case?

As regards the first question it is in my opinion that the contention in the plaintiff's Statement of Claim must fail *in limine*. The issue sought to be canvassed by the plaintiff in seeking the declaration is that the mandatory sentence of death under section 57(1) of the Internal Security Act is unconstitutional as being unreasonable, oppressive and infringing the equality provision of the Constitution.

As regards Article 5(1) of the Constitution the law is that if Parliament deems it necessary that the death penalty should be mandatory it is not within the province of the court to adjudicate upon the wisdom of such a law – see *Runyowa* v. *the Queen*.[3] The law may be harsh but the role of the court is only to administer the law as it stands. See also *Michael de Freitas* v. *George Ramoutar Benny & Ors.*[4] and *Ong Ah Chuan* v. *Public Prosecutor*.[5]

There is no question that the equality provision of Article 8 is infringed. I cannot see how Article 8 is contravened because although the mandatory death sentence may appear cruel it is not unequal in its application in that every person convicted of the offence would be subject to the same punishment.

As regards the second question it would in my opinion be irregular to re-open the issue. The plaintiff had exhausted all remedies available to him both judicial and administrative. He was convicted in the High Court and the conviction and sentence was upheld by the Federal Court. The Pardons Board under Article 42 of the Constitution had also been convened and had considered his case. In other words the plaintiff had gone through all the stages of the judicial process and his case had also been placed before the Yang di-Pertuan Agong in the Pardons Board. Therefore the subject sought for declaration is not a proper one and that the discretion of the court should be exercised against granting the application of the plaintiff.

Finally, it is urged on behalf of the plaintiff that the court should await the decision of the Indian Supreme Court in a pending suit on a similar declaration. I do not think that will provide a sufficient basis not to strike out the claims on the grounds stated above.

The application of the Attorney General is granted and the Statement of Claim of the plaintiff is struck out. No order as to costs. On the same grounds the order of stay granted on July 27, 1982 is set aside.

Application allowed.

Solicitors: *Karpal Singh & Co.*